pondent had obtained at least the permission of the Lembaga Letrik Negara, Klang, before carrying out the works and there is no evidence to show that the respondent had committed any breach of any of the conditions of the licence granting the approval to carry out the works. The damage caused to the cable was not something which the respondent could reasonably have foreseen because there was no marker anywhere near the site. Moreover, the respondent drove the earth pipe 7 feet deep into the ground only after having taken the precaution of digging a hole 3 feet wide and 3 feet deep and finding nothing at that site. In my view the appellant has failed to prove negligence on the part of the respondent and the appeal on this ground will therefore fail.

Next, the provisions of section 88(1) of the Electricity Ordinance on which the appellant relies for the alternative ground reads as follows: —

"Any person who removes, destroys, or damages, whether wilfully or otherwise, any installation .... before any court."

Counsel for the appellant submitted that on his interpretation of the said section the respondent would in the present case be liable to pay full compensation for the damages to the cable whether done wilfully or otherwise because it imposes strict liability. He based his argument on the meaning of the word "otherwise" in this section as defined in *Stroud's* Dictionary.

In this connection, I think it will be necessary to refer to section 75 of the Electricity Ordinance which makes it an offence to lay or carry any mains, pipes, etc. without first obtaining permission, the text of which reads as follows: —

"No person shall lay or carry any mains, pipes, conduits or wires in, along, through, across, over or under any street or place in a manner which is likely to interfere with or cause damage to any electrical works or apparatus of the Federal Government or of any State Government or of the Board without first obtaining permission from the Board. Permission may be granted or withheld at the discretion of the Board, or may be granted upon such terms and conditions as the Board thinks fit to impose."

It has been said from time to time that the general principle of the construction of a statute is that the meaning of a statute and the intention of the Legislature in enacting it can only be properly derived from a consideration of the whole enactment and every part of it in order to arrive, if possible, at a consistent plan. In *Canada Sugar Refining Company* v. *Reg.*,[1] Lord Davey said: —

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

In the circumstances it is my considered opinion that section 88(1) of the Electricity Ordinance would have to be read within the context of section 75. Since the respondent had obtained the prior permission of the Lembaga Letrik Negara and had taken sufficient precautions before driving in the pipe it is also my view upon reading the two said provisions together that the respondent cannot be liable under section 88(1) to pay compensation for the damage to the cable and therefore the appellant also fails on this ground. The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Ariffin & Ooi; Chin & Fernandez.*

RE SHIRLE GORDON; SHIRLE GORDON v. MINISTER OF HOME AFFAIRS

[O.C.J. (Abdul Hamid J.) April 16, 1974]
[Kuala Lumpur — Selangor Miscellaneous Criminal Application No. 6 of 1974]

Banishment — Whether applicant is a citizen or exempted person — Permanent resident, whether person in specified class — Onus on applicant to prove that he is a citizen or exempted person — Banishment Ordinance, 1959, ss. 5, 10, 12 & 17.

The applicant was served with a Banishment Order pursuant to section 5 of the Banishment Ordinance 1959. The Ordinance by virtue of section 12 provides for a category of persons who are exempted from the Ordinance by means of an order made under that section. In this case no such order had been made. The applicant was not a citizen but was a person who had been granted only an entry permit and allowed permanent residence in the country. The applicant pursuant to section 10 of the Ordinance applied to the High Court for an order that the banishment be set aside on the ground that she was a person in respect of whom a Banishment Order could not be made.

Held: the onus of proof lies upon the applicant to prove that she was a person in respect of whom a Banishment Order could not be made; no order bringing the applicant within the category of exempted persons had been made and therefore the applicant could not succeed in the claim that she came within the category of exempted persons.

MISCELLANEOUS CRIMINAL APPLICATION.

Dulip Singh for the applicant.

Gunn Chit Tuan (Senior Federal Counsel) for the respondent.

Abdul Hamid J. (delivering oral judgment): This is an application by Shirle Doris Gordon alias Alijah Gordon asking that the Banishment Order dated March 25, 1974 be set aside. This application is made under section 10 of the Banishment Ordinance, 1959. This section reads —

"10. Any person in respect of whom a banishment ... order has been made may within fourteen days of the service of a copy of such banishment order under sub-section (3) of section 5, ... apply to the High Court for an order that such banishment ... be set aside on the ground that he is a citizen of the Federation or an exempted person; and if it be proved on such application that such person is a citizen of the Federation or an exempted person the High Court shall set aside the banishment ... order ..., and direct that the applicant be set at liberty."

Now, the onus of proof is provided under section 17 of the Ordinance which states —

"17. If in any proceedings under this Ordinance or with reference to anything done or proposed to be done under this Ordinance, any question arises whether any person is a citizen of the Federation or an exempted person the onus of proving that he is a citizen of the Federation or an exempted person lies upon that person."

The order in this case was made pursuant to section 5 of the Banishment Ordinance. When the Minister is satisfied after such enquiry or on such written information as he may deem necessary or sufficient that the banishment of a person other than a citizen or an exempted person, would be conducive to the good of the Federation, he may make an order that such person be banished either for a term of his natural life or for such term as may be specified in such order. This court is not concerned with the grounds upon which the Minister came to be satisfied that the banishment of the applicant was conducive to the good of the Federation. This is entirely for the Minister alone to decide.

The only question that this court has to determine is whether the applicant has proved to this court that she is a person in respect of whom a Banishment Order cannot be made. I emphasize that the onus of proof lies upon the applicant. In her testimony the applicant stated quite clearly that she is not a citizen but a person granted only with permanent residence. To succeed in her application it is for the applicant to prove that she is the particular person or persons of specified class provided under an order under section 12 of the Ordinance. Who is an exempted person? Section 2 of the Banishment Ordinance defines an exempted person to mean "person exempted from the provisions of sections 5 and 8 by any order made under the provisions of section 12." In that event it is necessary to determine in the light of section 12 whether any order has been made pursuant to that provision. Section 12 reads —

"12. The Minister may by order direct that any particular person, or persons of any specified class, shall be exempt, either unconditionally or subject to such condition as the Minister may impose, from the provisions of sections 5 and 8."

In his testimony Tan Sri Datuk Ibrahim Ali, Permanent Secretary to the Ministry of Home Affairs, stated quite clearly that there was no order made pursuant to section 12 of the Ordinance by the Minister concerned the previous one or the present one. The applicant was only given an entry permit and allowed permanent stay. In view of this I fail to see how the applicant can succeed in establishing that she comes under the category of an exempted person. For this reason alone, I think, the applicant has failed to satisfy me that she is a person against whom a Banishment Order cannot be made. I would therefore dismiss this application.

Application dismissed.

Solicitors: *Dulip Singh & Co.*

H.M.T. v. DIRECTOR GENERAL OF INLAND REVENUE

[O.C.J. (Abdul Hamid J.) April 16, 1974]

[Kuala Lumpur — Originating Motion No. 12 of 1974]

Income Tax — Payment to employee at end of contract — Payment made ex gratia — Whether gratuity or compensation for loss of office — Income Tax Ordinance, 1947, ss. 10 & 13.

The appellant had been employed by the United Plantations Ltd. (the company) under three separate contracts of service which ran consecutively. The last contract was terminated by the company in accordance with its terms, the appellant being paid his normal salary and allowances up to his last day of leave in accordance with the contract. Thereafter, the appellant was paid by the company the sum of $74,954.32 as "gratuity on retirement". The Special Commissioners confirmed the assessment of income tax on the basis of that sum. The question for determination was whether the payment was compensation for loss of office or gains or profits in respect of the employment. The Revenue alleged that —

(i) the payment was a gratuity within the meaning of the Income Tax Ordinance 1947 viz: gains or profits from employment and was not a retiring gratuity;

(ii) it was an ex gratia payment and not compensation for loss of office;

(iii) the payment was made in respect of the appellant's employment with the company.

Held: the payment made to the appellant was a gratuity paid in respect of the appellant's employment with the company. The payment was not paid upon the retirement of the appellant or following any particular scheme drawn up by the company and neither was it paid pursuant to any provision in the service agreement. Although the company made the payment on its own accord it was clearly meant to be an ex gratia payment made in reference to the services rendered by the appellant in the nature of a reward at the end of the contract. Such payment was therefore gains or profits from an employment in respect of which tax was assessable.

Cases referred to:-

(1) *Commissioners of Inland Revenue* v. *Wesleyan and General Assurance Society* 30 T.C. 11 at p. 25.

(2) *Henriksen* v. *Grafton Hotel Ltd.* [1942] 2 K.B. 184 at p. 189.

(3) *Chibbett* v. *Joseph Robinson* 9 T.C. 48.

(4) *Henry* v. *Foster* 16 T.C. 605.

(5) *Comptroller General of Inland Revenue* v. *T.* (*Knight's* case) [1972] 2 M.L.J. 73.

(6) *H.* v. *Comptroller General of Inland Revenue* [1973] 2 M.L.J. 40 (*Heywood's* case).

(7) *Beynon* v. *Thorpe* 14 T.C. 1.

(8) *Cowan's* case 7 T.C. 372.

(9) *Edwards (Inspector of Taxes)* v. *Bairstow* [1956] A.C. 14, H.L.

ORIGINATING MOTION.

S. Woodhull for the appellant.

Mohamed Nizar bin Idris for the respondent.

Abdul Hamid J.: This is a case stated by the Special Commissioners for the opinion of this court pursuant to paragraph 34 of Schedule 5 to the Income Tax Act, 1967.

The appellant is dissatisfied with the decision of the Special Commissioners confirming the assessment of income tax for the year of assessment 1965 on the basis that payment of $74,954.32 to him by the United Plantations Limited Jendarata Estate Telok Anson (hereinafter referred to as "the company") was a gratuity paid in respect of his employment with the company and not compensation for loss of office.

The facts found by the Special Commissioners were as follows —

The appellant was first employed as an assistant by the company on January 16, 1955 on contract for a term of four years. Subsequently he was again employed on a second contract for a term of three years. The third and final contract of service between the appellant and the company was signed in Denmark on January 18, 1962 for a term of three years commencing on April 28, 1962. It was the practice that all contracts of service of expatriate staff were made and signed in Denmark. In all the appellant was employed for a period of just over ten years.

The appellant left Malaysia for Denmark on March 9, 1965 on completion of the contract on five months' leave due to him under the third contract of service with a return ticket for himself and his family.

The appellant's employment with the company ceased on August 3, 1965, on the expiry of his leave. He was informed by his employers in Denmark that they were terminating his contract of service with the company and was given the requisite notice of termination in accordance with clause 14 of the contract.